

Cr.Appeal No.284 of 1988
With
Cr.Appeal No.285 of 1988

(Against the judgment and order dated 23.5.1988 passed by Shri K.M.Toppo, 4th Additional Sessions Judge, Saharsa in S.T.No.28 of 1984)

1. Ganga Ram Sah

2. Sita Ram Sah

3. Pitambar Sah

4. Jagdish Sah

5. Umesh Prasad Gupta
- Appellants(in Cr.Appeal No.284 of 1988)

The State of Bihar

Ram Chandra Sah

The State of Bihar

For the Appellants
(In both the appeals)

For the Respondent
(in both the appeals)

Versus

.....Respondent

With

.... Appellant (In Cr.Appeal No.285 of 1988)

Versus

.....Respondent

..... Mr.Sidharth Prasad, Advocate
(Amicus Curiae)

.... Mr. Lala Kailash Bihari Prasad, learned
Public Prosecutor

P r e s e n t

The Hon'ble Mr.Justice Sudhir Kumar Katriar
The Hon'ble Mr.Justice Samarendra Pratap Singh

**SK Katriar &
SP Singh,JJ**

Both Criminal Appeal No.284 of 1988, and Criminal Appeal No.285 of 1988, have been preferred against the common judgment and order dated 23.5.1988, passed by the 4th Additional Sessions Judge, Saharsa, in S.T.No.28 of 1984. In Criminal Appeal No.284 of 1988, there are five appellants, namely, Ganga Ram Sah, Sita Ram Sah, Pitambar Sah, Jagdish Sah and Umesh Prasad Bhagat. In Cr.Appeal No.285 of 1988, there is only one appellant namely Ram Chandra Sah. By common judgment, all the five appellants in Cr.Appeal No.284 of 1988 have been convicted for charge under sections 302/149, 147 of the Indian Penal Code. However, appellant Ganga Ram Sah has additionally been convicted under section 302/109 I.P.C. also, whereas Pitambar Sah and Sitaram Sah have been convicted under section 323 of the Penal Code. All five appellants have been sentenced to undergo rigorous imprisonment for life, under section 302/149 and no separate sentence has been passed for conviction under other counts. The sole appellant Ram Chandra

Sah in Cr.Appeal No.285 of 1988 has been convicted under section 302 of the Penal Code and sentenced to under go R.I. for life.

2. The prosecution case, as made out in the fardbeyan of Jogendra Narayan Sah, the informant, son of late Suraj Sah, resident of Village- Birgaon, Nayatola, P.S. Mahishi, District Saharsa, recorded by Shri Yogeshwar Singh, Sub Inspector of Jalai O.P., on 27.6.1983, at 11 A.M., in short, is as follows:

i) The informant Jogendra Narayan Sah stated that three days ago, the cattle of Ram Chandra Sah, the sole appellant in Cr.Appeal No.285 of 1988, grazed his paddy, and he complained to villagers about it. He stated that on 27.6.1983, at about 9 A.M., he showed the grazed field to the Panches in presence of appellant Ram Chandra Sah. The Panches advised them not to get broiled in altercation. In the meantime, Sitam Ram Sah (Appellant no.2), who was present there, struck a lathi blow on the left leg and thigh of the informant's brother, Bauku Sah. The Panches intervened and separated both sides, stating that they would take a decision in respect of dispute shortly. The informant and his brother returned to their house, whereas Ram Chandra Sah and Sita Ram Sah rushed towards their house. No sooner the informant reached his house and was standing south west of it, all the six appellants named above, as well as on Sukhdeo Sah, the father of appellant nos.4 and 5 of Cr.Appeal No.284 of 1988, variously armed arrived there. The informant stated that Ram Chandra Sah was armed with gun and others were armed with lathi. Soon thereafter, Sukhdeo Sah (who was not sent up), and Ganga Sah, exhorted other accused to assault, whereupon appellant, Ram Chandra Sah, repeatedly opened fire from his gun killing informant's brother Ram Udgar Sah at the spot. He stated that his brother Ram Udgar Sah sustained wounds on his chest, neck, and mouth. The other accused persons assaulted him as a result of which he sustained injuries on the right side of head and right hand. The accused persons also assaulted his brother Uday Chandra Sah with lathi, on account of which he too sustained injuries on his head and fell on the ground. His brother Uday Chandra Sah was carried to hospital for treatment.

ii) The informant raised hulla, on which one Ram Swaroop Yadav, Pappu Yadav, Sadhu Sah, Dhodhai Sah (P.W.7), Bauku Sah (P.W.2), came and witnessed the occurrence and saved them from further assault. The informant alleged that the accused persons committed the offence, as he had chastised them for damaging his crops.

iii) On the basis of the aforesaid fardbeyan (Ext.5), a formal F.I.R. being Mahishi P.S.Case No.33 of 1983 was instituted on 27.6.1983, at 6 P.M., which has been marked Ext.7. The police after investigation submitted charge sheet. The Magistrate took cognizance of offence and committed the case to the court of sessions for trial. Charge under section 302 of the Indian Penal Code was framed against appellant Ram Chandra Sah, and charge under sections 302/109 of the I.P.C. was framed against appellant Ganga Ram Sah. Charge under section 302/149, 147 and 323 of the I.P.C. were framed against appellants Pitamber Sah, Sita Ram Sah, Jagdish Sah and Umesh Prasad Gupta. All the accused persons pleaded not guilty and claimed to be tried.

3. The prosecution examined altogether 15 witnesses in support of its case whereas the defence examined 8 witnesses. Out of the aforesaid 15 witnesses, Uday Chandra Sah (P.W.1), Bauku Sah (P.W.2), Anar Devi (P.W.3), wife of deceased Ram Udgar Sah, Parvati Devi (P.W.4), mother of the deceased, Ful Kumari (P.W.8), and the informant Yogendra Narayan Sah (P.W.10), are eyewitnesses of the occurrence. One of the injured, Sabo Devi (P.W.9), did not support the prosecution case and was declared hostile. Sadhu Sah (P.W.6), and Dhordhai Sah (P.W.7), both village Panches have partly supported the prosecution case. They denied to have seen the actual commission of occurrence and were declared hostile. Dr. P.K. Jha (P.W.11) examined the injured persons, namely, Uday Chandra Sah (P.W.1), and Bauku Sah (P.W.2), Ful Kumari (P.W.8), Sabo Devi (P.W.9) at Maheshi hospital on the day of occurrence. Jugehswar Singh (P.W.12) is the I.O. of this case. Dr. J.Lal (P.W.13), Civil Assistant Surgeon Sadar Hospital, Supaul held post mortem on the dead body of the deceased (Ext.13). J.K.Mishra (P.W.14), and Chotelal Yadav (P.W.15), are formal witnesses.

4. Uday Chandra Sah (P.W. 1) in his deposition supported the prosecution case as stated in the fardbeyan. He stated that the cattle of appellant Ram Chandra Sah had grazed their field. They took the Panches to the field in proof of their allegation, in presence of Ram Chandra Sah and his associates. In the meantime, an altercation took place, and appellant Sita Ram Sah assaulted Bauku Sah(P.W.2) with lathi on his hand and on his left thigh. The Panches separated both sides and assured to settle the dispute. Thereafter, informant and his cousin returned home. As soon as he reached his house, he saw appellant Ram Chandra Sah armed with gun and other appellants armed with lathi to have arrived there. He stated that at the instigation of Ganga Ram Sah and Sukhdeo Sah, the appellant Ram Chandra Sah opened fire, causing injuries on the chest, face and mouth of Ram Udgar Sah who died instantly. He also sustained pellet injuries on the left side of his head. He further stated that the wife of Sagar Sah and one Ful Kumari, daughter of Bhagan Sah, also sustained pellet injuries. One bull of Prem Sah also sustained pellet injuries. Pitambar Sah also assaulted his brother Yogendra Sah with lathi on his head. He had not seen any injury on the person of Ganga Ram Sah, Sukhdeo Sah and Sita Ram Sah. He admitted that appellant Ganga Ram Sah has also filed a counter case.

5. Bauku Sah (P.W.2) is another brother of the deceased Ram Udgar Sah. He supported the allegation of grazing of the crops by cattle of Ram Chandra Sah. He stated that Panches had also gone to the field and appellants Ram Chandra Sah and Sita Ram Sah were also present at that time. He stated that there was hot exchange between the two sides and appellant Sita Ram Sah assaulted him with lathi on his left thigh. He stated that as soon as they arrived at their house the accused persons variously armed came to their door and on order of Ganga Prasad Sah and Sukhdeo Sah, the appellant Ram Chandra Sah opened fire, killing his brother Ram Udgar Sah. His brother Ram Udgar Sah sustained injuries on his chest, face, and mouth. He stated that appellant Pitambar Sah assaulted Jogendra Narain Sah with lathi. He further stated that Ful Kumari (P.W.8), Sabo Devi (P.W.9), Udai Chandra Sah (P.W.1), and one bull of Prem Sah received pellet injuries.

6. P.W.3 Anar Devi, wife of deceased Ram Udgar Sah, also supported the prosecution case. She stated that in the morning of the fateful day, she came out of her house on hearing hulla. She saw appellant Ram Chandra Sah armed with gun and other accused persons armed with lathi, having arrived at her house. She stated that Ram Chandra Sah opened two fires from his gun killing her husband. She stated that the appellant Pitambar Sah assaulted the informant Yogendra Sah with lathi on his head. She further stated that her husband sustained injuries on his chest, face and mouth. This witness has not named Umesh Prasad Gupta as one of the accused, having come to her house along with other accused persons. She denied the suggestion that she had not taken name of any other accused persons other than the appellant Ram Chandra Sah before the police.

7. P.W.4 Parvati Devi is the mother of the deceased. She too had supported the prosecution case, as narrated by P.W. 3 Anar Devi, wife of the deceased. She, however, mentioned the name of Umesh Prasad Gupta also as one of the accused.

8. P.W.5 is a formal witness and has proved the signature of the informant Yogendra Prasad Sah on protest petition marked as Ext.2.

9. P.W.6 Sadhu Sah, and P.W.7 Dhadhoi Sah, are two Panches, who had gone to see the field, which was damaged by the cattle of appellant Ram Chandra Sah. They supported the initial part of the occurrence, in respect of assault made by Sita Ram Sah on Bauku Sah. However, they denied to have seen the actual occurrence of murder and were declared hostile. No useful purpose would be served in the facts of the case in examining their evidence in detail.

10. Ful Kumari Devi (P.W.8) is the daughter of Bhagan Sah. She stated that she had gone to the place of Sabo Devi (P.W.9) in the morning. Around that time, she heard hulla and saw appellant Ram Chandra Sah firing at Ram Udgar Sah killing him on the spot. She stated that she too along with Sabo Devi and one bull sustained pellet injuries.

11. Sabo Devi (P.W.9) wife of Sagar Sah who was also injured, however, turned hostile.

12. Jogendra Narayan Sah (P.W.10) is the informant of this case. In his evidence, he has fully supported the prosecution case narrated by him in the F.I.R. He stated that the cattle of Ram Chandra Sah has grazed his field, and he took Panches to the field to see for themselves the damage done to the crops. The appellant Sita Ram Sah, who had also gone to the field along with appellant Ram Chandra Sah, assaulted his cousin Baukau Sah with lathi on his head and thigh. He stated that soon thereafter Ram Chandra Sah armed with gun and other appellants armed with lathi, came to his house. At the instigation of Sukhdeo Sah (now dead), and Ganga Ram Sah (appellant no.1), Ram Chandra Sah opened two fires from his gun resulting in the death of Ram Udgar Sah. The deceased sustained injuries on chest, neck and face. His brother Udai Chandra Sah and Ful Kumari, who were standing nearby and one Sabo Devi, and a bull of Prem Sah, also sustained pellet injuries. He stated that Pitambar Sah (appellant no.3 of Cr.Misc.No.284 of 1988) assaulted him with lathi on right portion of his head. On hearing hulla, witnesses came to the place of occurrence and seeing them the accused persons fled away. He further stated that the I.O. has recorded his fardbeyan (Ext.3), at the place of occurrence. It appears that the defence has drawn his attention to his fardbeyan, from which it would appear that his statement was recorded by the I.O., not at the place of occurrence, but at Jalai O.P. In cross-examination he stated that it is not correct that he has not mentioned in the fardbeyan that Sabo Devi, Ful Kumari and a bull of one Prem Sah sustained pellet injuries. The defence has not been able to elicit any material contradiction going to the root of the prosecution case. The informant stated that he was in hospital for 17 days. We find that he has substantially corroborated the prosecution case in his evidence except for some minor contradictions.

13. Dr. P.K. Jha (P.W.17) prepared injury reports of five persons, namely, Uday Chandra Sah, Ful Kumari Devi, Sabo Devi, Yogendra Narain Sah, and Bauku Sah which has been marked Ext.4 to 4/4 respectively. He found fire arm injuries on the person of Uday Chandra Sah, Ful Kumari, Sabo Devi. He further found that Jogendra Narain Sah had sustained grievous injuries on his head, caused by hard

blunt substance (Ext.4/3). He found Bauku Sah having sustained swelling on his left thigh, caused by hard blunt substance. The medical report of Doctor by far and large proves the prosecution case that the aforesaid persons sustained fire arm, injuries as well, as injuries caused by hard blunt substance.

14. Yogeshwar Singh (P.W.12) is the Investigating Officer of this case. He found blood stained injuries on the head of the informant. He also found injuries on the person of Bauku Sah, Ful Kumari, Sabo Devi and Uday Chandra Sah. He sent all the injured persons, referred to above, to the hospital for treatment. In course of investigation, he found that the paddy field of the informant was grazed and damaged by cattle. He found Ram Udgar Singh lying dead on a rasta which was just south west to the house of the informant. He also saw pellet wounds on a bull of Prem Sah.

15. Dr. J. Lal (P.W. 13) conducted post mortem (Ext.13) on the dead body of Ram Udgar Sah on 28.6.1983, at about 10 A.M. He found the following injuries on the dead body:

- i) There were twenty abrasions (pellet marks) on the upper part of the chest.
- ii) There were four abrasions (pellet marks) on the front of the chest
- iii) There were nine pellet marks on the lower jaw
- iv) On opening the chest, the upper lobes of the both the lungs were found torn with free blood in both sides of the chest cavity. The injury was anti mortem, fatal and caused by gun shot injury.

He recovered three pellets from the chest of the deceased also. He found that injury no.4 was the cause of the death. He found over 31 pellet marks on the person of the deceased. He opined that such injuries may be caused due to gun shot from a distance of 15 yards. Time elapsed since death at the time of autopsy fits with the time alleged in the prosecution case.

16. J.K.Mishra (P.W.14), and Chhotelal Yadav (P.W.15), are all formal witnesses and have proved signatures on certain requisitions.

17. The defence examined altogether eight witnesses in support of their case. Mahavir Prasad (D.W.1) is a Medical practitioner who examined the injuries of the accused Ganga Ram Sah (Ext.A) on 27.6.1983.

18. Dr. Gajendra Prasad Thakur (D.W.7), a Medical practitioner of Laheriasarai, District Darbhanga, stated that he did treatment of Ram Chandra Sah from 24.6.1983 to 11.7.1983 as indoor patient in his clinic and proved his urine, stool, and blood test report (Ext.E to E/2), and Ext.9. He proved his prescription marked Ext.F to F/2 and proved his certificate dated 11.7.1983 marked Ext.H.

19. Ramdeo Sah (D.W.2), and Raghuvir Sah (D.W.5), a tendered witness, have claimed to accompany the accused Ram Chandra Sah to Laharia sarai for treatment.

20. Sashidhar Karn (D.W.3), an Advocate's Clerk, has formally proved Vakalatnama (Ext.B), complaint petition (Ext.C) of Complaint Case No.338© of 1983.

21. Tribhuwan Narayan Singh (D.W.4) has proved his typing of complaint petition.

22. Ayodhi Sah (D.W.6) has formally proved the hand writing and signature of Arun Kumar Singh, a sales man of Krishna Medical Hall, Laheriasarai (Ext.D to D/10).

23. The charges were explained to the accused persons in terms of section 313 Cr.P.C. in detail. Apart from the denial of charges leveled against them, a plea of alibi was also taken in respect of appellants Ram Chandra Sah.

24. On consideration of the materials on record, the learned trial court found that the prosecution has fully proved the manner of occurrence, as alleged by the prosecution. He also came to the finding that plea of alibi of Ram Chandra Sah is suspicious, as there was no reason for him to have gone to Laheriasarai for treatment. He found that the injuries on the person of Ram Chandra Sah is of trivial nature and as per Doctor can be easily manufactured. He found that the accused persons have not been falsely implicated on account of complaint case (Ext.C). The learned trial court held that appellant Ram Chandra Sah is guilty of the offence under section 302 of the Penal Code and Ganga Ram Sah for the offence under

section 302/149 of the Penal Code. He found accused Sita Ram Sah and Pitamber Sah guilty for the offence under section 323 of the Penal Code. He further found that all the appellants of Criminal Appeal No.294 of 1988 guilty for the offence under sections 147 and 302/149 of the Penal Code.

25. Learned counsel for the appellants submits that there is no whisper in the evidence of the prosecution witnesses, that other appellants shared common intention with appellant Ram Chandra Sah in killing the deceased. He stated that in fact other accused persons did not even make any attempt to kill the deceased. He submits that gun and cartridges used in the commission of crime has not been seized. He further submits that there are major contradictions in the statement of the informant Jogendra Narain Sah (P.W.10), as the I.O. has contradicted his statement that his fardbeyan was recorded at the place of occurrence. He submits that the informant was not in a position to make statement to the police in view of the statement of his mother that he became unconscious soon after being injured. He finally submits that the witnesses, namely, P.Ws 1, 2 and 10, who supported the prosecution case, are all brothers and submitted that deceased and Uday Chandra Sah sustained pellet injuries.

26. On the other hand, learned counsel for the State submits that the inference of common intention could be drawn from the conduct of the accused persons who all came and went together being variously armed. He further submits that the witnesses have fully supported the manner of occurrence, place of occurrence and time of occurrence. In support of his contentions, learned State Counsel relied upon decisions reported in the case of Willie (Wiliam) Slaney Vs State of Madhya Pradesh, 1956 SC 116; Lalji & Ors Vs State of U.P., A.I.R. 1989 SC 754; Bikau Pandey & Ors Vs State of Bihar, A.I.R. 2004 SC 997 and Gangadhar Behera & Ors Vs State of Orissa, 2003 SCC (Cri) 32.

27. He further submits that the alleged injuries on the person of the accused Ram Chandra Sah are all superficial and can be easily manufactured. He submits that the defence has not been able to prove the case of alibi of Ram Chandra Sah and a plea of alibi has to be proved with all absolute certainty. He submits that the

accused persons had reasons for committing the occurrence, as they were infuriated because of the complaint made against them to the Panches.

28. We now proceed to examine their rival submissions. The main issue is, whether the prosecution has been able to prove the place and manner of occurrence. P.W.1, P.W.2 and P.W.10 consistently stated that the cattle of accused persons grazed their field. In support of their assertion, they even took P.W.6 and P.W.7 to their field in presence of accused Ram Chandra Sah and Sita Ram Sah. All the aforesaid witnesses specifically stated that altercation ensued there and accused Sita Ram Sah assaulted Bauku Sah with lathi on his thigh causing injury. Even the I.O. in course of investigation inspected the field and found the same to be grazed and damaged by cattle. Further more P.Ws 1, 2, 3 and 10 had stated in their evidence that the accused persons thereafter arrived at their house, variously armed and at the instigation of Sukhdeo Sah and Ganga Ram Sah opened fire killing Ram Udgar Sah on the spot. The witnesses consistently stated that the accused persons assaulted the informant on the right side on his head and right hand. They also stated that Uday Chandra Sah, Ful Kumari, and Sabo Devi, and a bull of Prem Sah, sustained pellet injuries. P.W. 13 the Doctor, who held post-mortem on deceased Ram Udgar Sah, opined that the latter died on account of gun-shot injuries. He found that the deceased had sustained 20 pellet marks on the upper part of chest, 4 pellet marks on the front part of chest, and 9 pellet marks on the lower jaw. He also found that on opening the chest, the upper lobes of both lungs were found torn with the blood in both sides of chest cavity. The time elapsed since death as mentioned in the post-mortem report fits in with the prosecution case. Dr. P.K. Jha, P.W.11, also found pellet injuries on the person of Uday Chandra Sah. He also found injuries on the person of the informant on his head and hand, the former being grievous in nature.

29. It is true that he did not find any fire-arm injury on the person of Ful Kumari Devi and Sabo Devi, and as such the claim of prosecution case that they also sustained pellet injuries in course of firing opened by accused Ram Chandra Sah is not consistent with the prosecution case to that extent. It is not uncommon that such errors in perception do crop up when firing is resorted on a group of

persons followed by assault by other weapons. The witnesses in such situation are in a state of shock and the first anxiety is to save themselves and others. It is not the defence case that Ful Kumari Devi and Sabo Devi have sustained no injury.

30. Learned counsel for the appellants submits that in view of the statement of P.W. 3, the wife of the deceased, the informant P.W.10 would not have been in a position to make his fardbeyan in the same evening. He submits that P.W.3 stated in her evidence that, after the occurrence, the informant Jogendra Narayan Sah remained unconscious for 2-3 days. It would be relevant to note here that Anar Devi(P.W.3) supported the occurrence and has stated in her evidence that accused Ram Chandra Sah opened fire killing her husband, and accused Pitambar Sah assaulted the informant with lathi on his head. It would appear from the evidence that the informant (P.W.10) was also taken to the hospital for treatment of his head injuries, which was grievous in nature. P.W. 3 being an illiterate woman while making her aforesaid statement must be making the statement as the informant remained hospitalized for two to three days.

31. Learned counsel for the appellants submitted that the informant made his fardbeyan at the place of occurrence in his village, whereas the I.O. stated that he has recorded the fardbeyan at Jalai O.P. On the basis of such contradiction, he had submitted that the statement of the informant Jogendra Narayan Sah (P.W.10) cannot be deemed to be reliable and on scrutinizing of the evidence of the I.O. In this respect we find that except for aforesaid error in his evidence, his statement has been consistent with the prosecution case.

32. The next issue is whether prosecution has any motive for committing the aforesaid occurrence. It is now established from evidence that the informant complained to the Panches P.Ws 6 and 7 that cattle of accused persons grazed his field. The accused persons got infuriated, and not only assaulted Bakau Sah at the time of inspection of the field by Panches itself, but they followed suit, variously armed and attacked the prosecution side killing the informant's brother Ram Udgar Sah. Thus we find that the accused person were angry, as a complaint was made against them and in fit of rage committed the instant occurrence.

33. This takes us to the next question, whether charge under section 302/149 of the Penal Code has been made out against the other accused persons. Learned counsel for the appellants submits that it would appear from the prosecution case that other appellants, namely, Sita Ram Sah, Pitambar Sah, Jagdish Sah, Ganga Ram Sah, and Umesh Prasad Gupta, did not participate in the assault of the deceased Ram Udgar Sah. He submits that as such no case either under section 302/149 or 302/34 of the Penal Code is made out against the accused appellants.

34. In this respect we find that the witnesses consistently stated that Ganga Ram Sah and one Sukhdeo Sah (now deceased) exhorted the accused persons to assault prosecution side, whereupon Ram Chandra Sah opened fire and other accused persons assaulted the informant and others. It would further appear from evidence of the prosecution witnesses that all the accused persons came variously armed to the place of the prosecution side and instantly on the order of Ganga Ram Sah, one of them, namely, Ram Chandra Sah opened fire killing the deceased. It would further appear from the prosecution case that after the incident all of them fled together. It would thus appear from the evidence of prosecution witnesses that all the accused persons shared common object of committing murder of a member of the prosecution side in which one of them executed the plan by firing at the deceased. It is not necessary that individual overt act on the part of every member of unlawful assembly would be necessary for showing that they shared the same common object for proving a charge under section 302/149 I.P.C.

35. The aforesaid view of ours finds supports decision of the Apex Court in the case of Lalji Vs State of U.P., 1989 SC 754; Bikau Pandey Vs State of U.P., 2004 SC 997; G.Bahera and others Vs State of Orissa, 2003 SCC (Cri) 32. It is well established by now that sharing common object can be culled out from the nature of assembly, arms it carries, behaviour at or before occurrence. Thus we find and hold that the prosecution has proved the charge under section 302/109 of the Penal Code as well as section 302/149 and 147 of the Penal Code against appellant Ganga Ram Sah and charge under section 302/149 of the Penal Code against appellants Sita Ram Sah, Pitambar Sah, Jagdish Sah and Umesh Prasad Gupta. We further

hold that the charge under section 323 of the Penal Code is also made out against the appellants Pitamber Sah and Sita Ram Sah.

36. Learned counsel for the appellants also urged the plea of alibi of appellant Ram Chandra Sah. He submits that Ram Chandra Sah was hospitalized in the clinic of Dr. J.K. Thakur (D.W.7) from 24.6.1983 to 10.7.1983. He submitted that the Doctor proved the urine, stool and blood test reports (Ext.E to Ext.E/2). He submits that Ayodhi Sah (D.W.6) has proved handwriting and signature of Arun Kumar Singh, a sales man of Krishna Medical Hall (Ext.D to D/10).

37. On careful scrutiny of the defence witnesses, it would appear that the Doctor has stated in his evidence that the injuries were superficial in nature and can be manufactured. He admitted in his evidence that no register has been maintained in respect of indoor patient. He also admitted that even there is no register for maintaining the case receipt. It would further appear from the evidence that D.M.C.H., Darbhanga is very close to the clinic of Dr. J.K. Thakur, still he was not examined there. The aforesaid Ram Chandra Sah is resident of Village Birgaon, Naya Tola, Mahisi, in the district of Saharsa, and it appears strange that he was carried for treatment to a far-flung district. In this view of the matter, this court holds that the trial court has rightly found that the defence has not been able to prove the alibi of appellant Ram Chandra Sah. It is well settled by now that alibi must be proved with absolute certainty. In the instant case, the plea of alibi of appellant is unsustainable.

38. On consideration of the materials on record, we find that the charge under section 302 of the Penal Code is fully proved against the appellant Ram Chandra Sah and his conviction by the trial court is in order.

39. From the foregoing discussion, we find and hold that the prosecution has been able to prove the charge under section 302 of the Penal Code against appellant Ram Chandra Sah, charge under section 302/149 of the Penal Code against all the rest five appellants. The prosecution has also been able to prove further charge under section 302/109 against appellant Ganga Ram Sah and charge under section

323 of the Penal Code against the appellants Pitamber Sah and Sita Ram Sah beyond all reasonable doubts.

40. In the result, the instant appeal fails and is dismissed. As a consequence, the bail bonds of the appellants are cancelled and they are directed to surrender before the learned trial court to serve out the remaining part of their sentences.

41. The Patna High Court Legal Services Committee would pay a sum of Rs.5000/-(Rupees Five thousand) to Mr. Sidharth Prasad, Advocate, who appeared in this case as Amicus Curiae and rendered valuable assistance to the court.

(Samarendra Pratap Singh,J)

(Sudhir Kumar Katriar,J)

Patna High Court
Dated the 9th July, 2008
KHAN/A.F.R.

